

§ 127.603 What are the requirements for filing an EDWOSB or WOSB protest?

(a) *Format.* Protests must be in writing and must specify all the grounds upon which the protest is based. A protest merely asserting that the protested concern is not an eligible EDWOSB or WOSB, without setting forth specific facts or allegations, is insufficient.

(b) *Filing.* Protestors may deliver their written protests in person, by facsimile, by express delivery service, or by U.S. mail (postmarked within the applicable time period) to the following:

(1) To the contracting officer, if the protestor is an offeror for the specific contract; or

(2) To the D/GC, if the protest is initiated by the contracting officer or SBA.

(c) *Timeliness.* (1) For negotiated acquisitions, an interested party must submit its protest by the close of business on the fifth business day after notification by the contracting officer of the apparent successful offeror or notification of award.

(2) For sealed bid acquisitions, an interested party must submit its protest by close of business on the fifth business day after bid opening.

(3) Any protest submitted after the time limits is untimely, unless it is from SBA or the contracting officer. A contracting officer or SBA may file an EDWOSB or WOSB protest at any time after bid opening or notification of intended awardee, whichever applies.

(4) Any protest received prior to bid opening or notification of intended awardee, whichever applies, is premature.

(5) A timely filed protest applies to the procurement in question even if filed after award.

(d) *Referral to SBA.* The contracting officer must forward to SBA any protest received, notwithstanding whether he or she believes it is premature, sufficiently specific, or timely. The contracting officer must send all protests, along with a referral letter, directly to the Director for Government Contracting, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416, or by fax to (202) 205–

6390, Attn: Women-Owned Small Business Status Protest. The contracting officer's referral letter must include information pertaining to the solicitation that may be necessary for SBA to determine timeliness and standing, including: The solicitation number; the name, address, telephone number and facsimile number of the contracting officer; whether the protestor submitted an offer; whether the protested concern was the apparent successful offeror; when the protested concern submitted its offer; whether the procurement was conducted using sealed bid or negotiated procedures; the bid opening date, if applicable; when the protest was submitted to the contracting officer; when the protestor received notification about the apparent successful offeror, if applicable; and whether a contract has been awarded. The D/GC or designee will decide the merits of EDWOSB or WOSB status protests.

§ 127.604 How will SBA process an EDWOSB or WOSB status protest?

(a) *Notice of receipt of protest.* Upon receipt of the protest, SBA will notify the contracting officer and the protestor of the date SBA received the protest and whether SBA will process the protest or dismiss it under paragraph (b) of this section.

(b) *Dismissal of protest.* If SBA determines that the protest is premature, untimely, nonspecific, or is based on nonprotestable allegations, SBA will dismiss the protest and will send the contracting officer and the protestor a notice of dismissal, citing the reason(s) for the dismissal. Notwithstanding SBA's dismissal of the protest, SBA may, in its sole discretion, consider the protest allegations in determining whether to conduct an examination of the protested concern pursuant to subpart D of this part.

(c) *Notice to protested concern.* If SBA determines that the protest is timely, sufficiently specific and is based upon protestable allegations, SBA will:

(1) Notify the protested concern of the protest and of its right to submit information responding to the protest within five business days from the date of the notice; and

(2) Forward a copy of the protest to the protested concern.

(d) *Time period for determination.* SBA will determine the EDWOSB or WOSB status of the protested concern within 15 business days after receipt of the protest, or within any extension of that time that the contracting officer may grant SBA. If SBA does not issue its determination within the 15-day period, the contracting officer may award the contract, unless the contracting officer has granted SBA an extension. The contracting officer may award the contract or begin performance after receipt of a protest if the contracting officer determines in writing that an award must be made to protect the public interest.

(e) *Notification of determination.* SBA will notify the contracting officer, the protestor, and the protested concern in writing of its determination. If SBA sustains the protest, SBA will issue a decision explaining the basis of its determination and requiring that the concern remove its designation on the CCR and ORCA as an EDWOSB or WOSB, as appropriate.

(f) *Effect of determination.* SBA's determination is effective immediately and is final unless overturned by OHA on appeal pursuant to §127.605 of this part.

(1) The purpose of the protest process is to ensure that contracts are awarded to, and performed by, eligible WOSB and EDWOSB concerns. A contracting officer shall not award a contract to an ineligible concern, and shall not authorize an ineligible concern to begin performance.

(2) Where award was made and performance commenced before receipt of a negative final agency decision, the contracting officer may terminate the contract, not exercise any option, or not award further task or delivery orders.

(3) Whether or not a contracting officer decides to not allow an ineligible concern to fully perform a contract under paragraph (f)(2) of this section or under §134.704 of this title, the contracting officer cannot count the award as one to an EDWOSB or WOSB and must update the Federal Procurement Data System—Next Generation (FPDS—NG) and other databases from the date of award accordingly.

(4) A concern that has been found to be ineligible may not represent itself as a WOSB or EDWOSB on another procurement until it cures the reason for its ineligibility. A concern that believes in good faith that it has cured the reason(s) for its ineligibility may request an examination under the procedures set forth in §127.405.

§ 127.605 What are the procedures for appealing an EDWOSB or WOSB status protest decision?

The protested concern, the protestor, or the contracting officer may file an appeal of a WOSB or EDWOSB status protest determination with the SBA's Office of Hearings and Appeals (OHA) in accordance with part 134 of this chapter.

Subpart G—Penalties

§ 127.700 What penalties may be imposed under this part?

Persons or concerns that falsely self-certify or otherwise misrepresent a concern's status as an EDWOSB or WOSB for purposes of receiving Federal contract assistance under this part are subject to:

(a) Suspension and Debarment pursuant to the procedures set forth in the Federal Acquisition Regulations, subpart 9.4 of title 48 of the Code of Federal Regulations;

(b) Administrative and civil remedies prescribed by the False Claims Act, 31 U.S.C. 3729–3733 and under the Program Fraud Civil Remedies Act, 31 U.S.C. 3801–3812;

(c) Administrative and criminal remedies as described at Sections 16(a) and (d) of the Small Business Act, 15 U.S.C. 645(a) and (d), as amended;

(d) Criminal penalties under 18 U.S.C. 1001; and

(e) Any other penalties as may be available under law.

PART 130—SMALL BUSINESS DEVELOPMENT CENTERS

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